JD(SF)–15–06
San Diego, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

NATIONAL STEEL & SHIPBUILDING COMPANY

and Case 21-CA-36772

SHIPYARD WORKERS UNION affiliated with the INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO[1]

Robert MacKay, Esq. for the General Counsel,
San Diego, California.

Theodore R. Scott, Esq.,
(Luce, Forward, Hamilton & Scripps, LLP),
San Diego, California for Respondent.

Robert Godinez, *President*, *Shipyard Workers Union*,
National City, California for Charging Party.

DECISION

Statement of the Case

JOHN J. MCCARRICK, Administrative Law Judge: This case was tried in San Diego, California, on November 14 and 15, 2005 based upon the Order consolidating cases, consolidated complaint and Notice of Hearing issued on June 8, 2005 by the Regional Director for Region 21. On November 9, 2005, the Regional Director issued an Order severing case and withdrawing portions of consolidated complaint and dismissing charge in Case 21-CA-36771.[2] The consolidated complaint, as amended, alleges that National Steel & Shipbuilding Company, Respondent, violated Section 8(a)(1) and (5) of the Act by unilaterally removing the right of the Shipyard Workers Union, affiliated with the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Union, to remove a previously-appointed Union Health and Safety Representative and by unilaterally appointing a Union Health and Safety Representative. Respondent filed a timely answer to the consolidated complaint denying any wrongdoing.

Findings of Fact

[1] The name of the Union was amended at the hearing.

[2] Paragraph 8(a) of the consolidated Complaint relating to the assignment of non-unit employees to perform bargaining unit work in the sheet metal shop was withdrawn.

Upon the entire record[3] herein, including the stipulation, and the briefs from the General Counsel and Respondent, I make the following findings of fact.

I. Jurisdiction

Respondent, a California corporation, with facilities located in San Diego, California, is engaged in the business of operating a commercial shipyard. Annually, Respondent in the course of its business operations purchases and receives at its San Diego, California facility goods valued in excess of $50,000 directly from points outside the State of California. In performing services to the United States Navy annually in excess of $50,000, Respondent has a substantial impact on the national defense of the United States.

Based upon the above, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

Respondent admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

a. The issues

The central issue in this case concerns language in the parties' expired 1988-1992 collective-bargaining agreement and in the Respondent's 1993 and 2003 implemented best, last and final offers that deal with a position called the Union Health and Safety Representative. The General Counsel argues that the language of the expired collective-bargaining agreement as well as the Respondent's best, last and final offer gives the Union the right to remove an incumbent and appoint another person to that position while Respondent contends the contract language and past practice gives it the exclusive right to remove an incumbent. Further, the General Counsel takes the position that under the expired contract language and the best, last and final offer the Union has sole right to appoint the Union Health and Safety Representative while Respondent contends it may appoint an individual to this job if the unions cannot agree on a candidate. It is the Respondent's refusal to remove an incumbent Union Health and Safety Representative and its subsequent appointment of an individual not nominated by the unions that is alleged as violations of Section 8(a)(1) and (5) of the Act.

b. The Bargaining History

Historically since at least 1980 Respondent has had a collective-bargaining relationship with seven unions who represented discreet bargaining units of Respondent's shipyard employees, including the International Association of Machinists, Local 389 (Machinists), International Brotherhood of Electrical Workers, Local 569 (IBEW), International Union of Operating Engineers, Local 12 (Operating Engineers), Painters and Allied Trades, Local 333 (Painters), Teamsters Local 36 (Teamsters), Carpenters Local 1300 (Carpenters) and Iron

[3] On January 19, 2006, Counsel for Respondent filed a Motion to Correct Hearing Transcript. On January 20, 2006, Counsel for the General filed its Partial Opposition with respect to page 80, line 3 of the transcript. On January 25, 2006, Counsel for Respondent withdrew that portion of its motion dealing with transcript page 80, line 3. I grant Counsel for Respondent's Motion to Correct Transcript with the exception of page 80, line 3.

Workers, Local 627 (Ironworkers) at its San Diego, California shipyard. Separate collective-bargaining agreements were entered into with each union.

In the 1980's Respondent and the seven unions agreed to the creation of a company-paid Union Health and Safety Representative. In this regard, the Ironworkers Local 627 collective-bargaining agreement, effective September 2, 1988 to September 30, 1992, provided at Section 24(A)(4):

> The seven Unions combined shall be allowed to appoint one full-time Company paid Union Health and Safety Representative from among Company employees on the first shift provided that there are at least 600 bargaining unit employees on the first shift. [4]

The Union Health and Safety Representatives are assigned to work in Respondent's safety department under the supervision of the Safety Manager but remain part of the bargaining unit. In addition to the three Union Health and Safety Representatives, there are three non-bargaining unit salaried safety representatives appointed by Respondent. Both the salaried safety representatives and the Union Health and Safety Representatives perform the same duties. The Union Health and Safety Representatives respond to employee complaints about safety issues, conduct safety inspections of assigned areas of the Respondent's shipyard, participate in OSHA inspections, conduct safety investigations and test hazardous materials.

The parties engaged in collective bargaining for a new contract to replace the agreement that expired on September 30, 1992. During the course of negotiations, Respondent proposed a modification of Section 24(A)(4) as follows:

> Appointments to and continued service in the above Safety and Health Representative positions shall be subject to the approval of the Safety Manager. In the event the Safety Manager intends to remove any one of the Safety and Health Representatives, the Union will be given a ten (10) workday notice.[5]

After a strike in 1992, Respondent implemented several of its contract proposals including the above modification of Section 24(A)(4) of the collective-bargaining agreement with the Ironworkers Union.

Most of the unions have been without a collective-bargaining agreement since 1992.[6] In 2002 the Shipyard Workers Union was certified by the Board to represent a bargaining unit of employees that had previously been represented by the Iron Workers, Teamsters, Carpenters and Painters Unions.[7] The Machinists, Operating Engineers and IBEW continue to represent separate units of Respondent's shipyard employees.

In 2002 and 2003 Respondent and the Shipyard Workers Union engaged in collective bargaining for the four bargaining units it represented. The parties reached tentative agreement on many contracts provisions, including the Union Health and Safety Representative. This provision states:

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[4] Respondent's exhibit 1, section 24(A)(4)

[5] Respondent's exhibit 2, page 39

[6] Respondent and the Machinists Union are parties to a collective-bargaining agreement that contains language similar to modified Section 24(AA)(4) and Article 26, Section 3, infra. Respondent's exhibit 3, page 58.

[7] Cases 21-RC-20257, 21-RC-20258, 21-RC-20259

ARTICLE 26
SAFETY

Section 3. Paid Union Health and Safety Representative(s)

> (a) The unions currently certified to represent Company employees may jointly appoint and maintain one (1) employee as a full-time paid Health and Safety Representative on the first shift when total bargaining unit employment on said shift is 600 or more. Another full-time paid Representative may be so appointed when total bargaining unit employment on the fist shift exceeds 1,300. One such Representative may be appointed and maintained on the second or third shifts when bargaining unit employment on such a shift is 400 or more. Part-time Representatives may be appointed to and maintained on any shift upon such terms and conditions as the Company and unions may agree in writing. The appointment and continued service of a paid Health and Safety Representative is subject to approval by the Safety Manager who, with just cause can remove any such Representative. Unions must be notified in writing at least ten (10) calendar days prior to such removal.[8]

In December 2003, after an impasse in bargaining, Respondent implemented its last, best and final contract offer, including the provisions of Article 26, Section 3, above.

c. The Facts Leading to the Dispute

Before September 2004, there were three Union Health and Safety Representatives, Jesus "Chuey" Hernandez, Louie Aguayo and Raul Perez who had been appointed by the unions.

On September 16, 2004, Shipyard Workers Union President Robert Godinez (Godinez) delivered a letter to Respondent's Director of Human Resources Tom Fawcett (Fawcett) requesting the appointment of three new Union Health and Safety Representatives.[9] The letter, signed by agents of the four remaining unions stated in pertinent part:

> This is to inform you that as of September 20, 2004 the Unions have jointly appointed the following employees to the position of full-time "Paid Health and Safety Representative(s)".
>
> 1. Indalicio Parra, 1st shift.
> 2. Enrique Torres, 2nd shift.
> 3. Raul Perez, 2nd shift.
>
> We would appreciate your immediate response to our selection of Health & Safety Representatives. Sincerely;
>
> Machinist Union 389: _____
> Richard Sanchez, Business Rep.
>
> Shipyard Workers Union: _____

[8] General Counsel's exhibit 3, page 31
[9] General Counsel's exhibit 4

Robert Godinez, President

Electrical Union 569: _____
Duncan Abrams, Business Agent

Operators Local 12: _____
Robert Navarro, Representative

By letter dated September 17, 2004,[10] Fawcett advised the unions that he was in receipt of their joint letter of September 14, 2004 regarding appointment of the Union Health and Safety Representatives and that the appointments were being referred to Respondent's Safety Manager for review pursuant to the language of existing and implemented agreements. Fawcett noted that the two new proposed Health and Safety Representatives would be interviewed by the Safety Manager and that the incumbent Union Health and Safety Representatives would be retained until the Union's appointed replacements had been approved by the Safety Manager. Fawcett added: "However, if the Unions would like to have the current Health and Safety representatives that are being terminated by the Unions removed immediately, please notify me."[11]

On November 3, 2004, Fawcett sent a letter[12] to Godinez advising that the unions did not have a right to remove incumbent Union Health and Safety Representatives and based upon existing and implemented contract language, the only person with authority to remove incumbent Union Health and Safety Representatives is the Safety Manager. Fawcett stated further that since the incumbent Union Health and Safety Representatives were performing well, the incumbents would not be removed.

On January 7, 2005, Fawcett advised the unions that there would be a vacancy in one of the Union Health and Safety Representative positions caused by the retirement of "Chuey" Hernandez on February 4, 2005.[13] In response on February 3, 2005, Godinez wrote to Fawcett that the unions had already submitted proposed Union Health and Safety Representatives on September 14, 2004, and that Enrique Torres should be selected to replace Hernandez.[14] By letter dated February 3, 2005, Fawcett told Godinez that his letter of February 5 did not constitute a valid joint union appointment as almost five months had passed since the joint appointment and there was no evidence that the unions were still in agreement.[15]

Later the unions could not agree on an appointment. On February 7, 2005 the Machinists sent Respondent a letter stating that they were nominating Robert Johnson (Johnson) for Union Health and Safety Representative.[16] On February 8, 2005, the IBEW sent Respondent a letter stating that they supported Johnson for Union Health and Safety Representative.[17] On February 10, 2005 Respondent's Safety Manager interviewed Johnson for the Union Health and Safety Representative. On February 11, 2005, Fawcett advised the four unions since they could not agree upon a joint candidate for the vacant Union Health and Safety Representative, Respondent was going to select an interim Union Health and Safety

[10] General Counsel's exhibit 5.
[11] Ibid.
[12] General Counsel's exhibit 28
[13] General Counsel's exhibit 40
[14] General Counsel's exhibit 43
[15] General Counsel's exhibit 44
[16] Respondent's exhibit 17
[17] Respondent's exhibit 18

Representative until the unions could agree on a joint appointment.[18] On February 14, 2005, Godinez responded to Fawcett's February 11 letter and stated that Respondent did not have the right to select the Union Health and Safety Representative.[19] On February 18, 2005, Fawcett advised the four unions that Johnson was selected as interim Union Health and Safety Representative and if the four unions did not make a joint appointment by March 1, 2005, Johnson would be made permanent.[20] Other than the three candidates submitted by the four unions on September 14, 2004, the four unions have not submitted any additional joint candidates for the vacant Union Health and Safety Representative.

d. Analysis

1. Issues

1. Did Respondent violate Section 8(a)(5) of the Act by eliminating the Union's right to replace an incumbent Union Health and Safety Representative?

2. Did Respondent violate Section 8(a)(5) of the Act by unilaterally appointing a Union Health and Safety Representative?

3. Did the Union waive its right to bargain over the Respondent's appointment of the Union Health and Safety Representative?

4. Does Section 10(b) of the Act preclude the charges?

Resolution of these issues requires a determination of the parties' rights under applicable Board law, relevant past practice and Respondent's implemented contract proposals.

2. The Law

The Board held in *Peerless Publications*, 283 NLRB 335 (1987): "Labor law presumes that a matter which affects the terms and conditions of employment will be a subject of mandatory bargaining." Sections 8(a)(5) and 8(d) of the Act limit the obligation to bargain to matters of wages, hours, and other terms and conditions of employment. If the subject of bargaining "regulates the relation" between the employer and employee, that matter is a mandatory subject of bargaining. *NLRB v. Borg-Warner Corp.,* 356 U.S. 342 (1958).

An employer violates it duty to bargain in good faith when it unilaterally changes the terms and conditions of employment of its employees without discussions with their representative. *NLRB v. Katz*, 369 U.S. 736 (1962).

When it is alleged that an employer has unilaterally changed terms and conditions that constitute a past practice, the General Counsel must establish the existence of the past practice. *Exxon Shipping Co*., 291 NLRB 489, 492 (1988). In order to prove the existence of a past practice the Board has required that:

[18] General Counsel's exhibit 45
[19] General Counsel's exhibit 46
[20] General Counsel's exhibit 47

> The change complained of must be of an activity which has been "satisfactorily established" by practice or custom; an "established practice"; an "established condition of employment."[21]

3. Removal of the Union Health and Safety Representatives

The first issue to be decided therefore is whether the denial of the Union's request to replace sitting Union Health and Safety Representatives with new appointees constitutes a change in the employees' terms and conditions of employment. In order for this action to be considered a change in a past practice, it must be proven that there was a practice established of the unions' removal of Union Health and Safety Representatives.

General Counsel argues that the language of Article 26, Section 3(a) Respondent implemented as part of its best, last and final offers after negotiations in 1992-1993 and 2002-2003 which states, "The unions currently certified to represent company employees may jointly appoint and maintain . . . a full-time paid Health and Safety Representative . . ." clearly and unambiguously creates the unions' right to remove an incumbent Union Health and Safety Representative. Respondent's contention is that pursuant to the express language contained in Article 26 the unions have been given no right to remove the Union Health and Safety Representative and there is no evidence of a past practice where the unions removed incumbents.

Nothing in the language of Article 26, Section 3(a) expressly authorizes the unions to remove incumbent Union Health and Safety Representatives. The ability to remove the Union Health and Safety Representative under this provision is reserved solely to Respondent for cause. General Counsel appears to argue that the unions' right to remove the Union Health and Safety Representative is implied in the language of Respondent's proposal implemented as Article 26, Section 3(a). However, nothing in the definition of the terms 'appoint" and "maintain" suggests the power to remove.[22]

Since there is no express language giving the Union the power to remove Union Health and Safety Representatives, I will look to evidence of actual past practice of the unions removing these representatives. The only evidence concerning past practice comes from the testimony of Carl Hinrichsen (Hinrichsen), Respondent's Manager of Industrial Relations, responsible for negotiation and administration of collective-bargaining agreements from 1978 to 2002. Hinrichsen's uncontradicted testimony established that there was no discussion during the 1992-1993 or the 2002-2003 bargaining about whether the unions had the right to remove an incumbent Union Health and Safety Representative. The only evidence of a past practice of the unions removing a Union Health and Safety Representative occurred in the mid-1990's when unions requested that Union Health and Safety Representatives be removed. In one case Respondent refused to recognize the Carpenter's Union and a request was made to remove a Carpenter's Union Health and Safety Representative. In the other example the union requested the removal of a Union Health and Safety Representative because he was not paying union dues. Respondent refused to remove either of the Union Health and Safety Representatives. Contrary to the assertion of General Counsel, the language in Article 26, Section 3(a) of Respondent's best, last and final offer does not authorize the Union to remove Union Health and Safety Representatives and is reinforced by the absence of a past practice reflecting that the

[21] *Exxon Shipping Co.*, supra.

[22] The term "appoint" is defined as "to name officially and the term "maintain" is defined as "to keep in an existing state." *Merriam-Webster Online Dictionary*.

unions removed Union Health and Safety Representatives. I find there is no evidence of a past practice by the unions of removing incumbent Union Health and Safety Representatives.

General Counsel argues there are analogous provisions in Respondent's implemented last best and final offer that give the Union the power to appoint stewards,[23] an employee Joint Union/Management Safety Committee member and an alternate employee Committee member.[24] General Counsel contends that the Union's past practice of removing its union stewards establishes the Union also had the right to remove Union Health and Safety Representatives.

Hinrichsen admitted that unions have the right under extant contract language and implemented best, last and final language to remove incumbent union stewards despite the absence of express language giving the unions such authority. Further, there has been a past practice of the unions removing incumbent stewards.

However, contrary to Hinrichsen's testimony, neither extant contract language nor Respondents' implemented last, best and final offers create the unions' right to remove union stewards. Both the contracts and the implemented last, best and final offers are silent as to the unions' right to remove either union stewards or Union Health and Safety Representatives. It is the actual past practice that establishes whether a term or condition of employment was created. In the case of the Union Health and Safety Representative there is no past practice creating the unions' authority to remove while in the case of union stewards a right of removal was established by the unions' actually removing their agents. I find that Respondent did not violate Section 8(a)(1) and (5) of the Act by failing to remove the incumbent Union Health and Safety Representatives or in failing to install the new candidates appointed by the unions. I will dismiss this portion of the complaint.

4. Respondent's Appointment of a Union Health and Safety Representative

The second issue for determination is whether the Respondent's February 18, 2005, appointment of a Union Health and Safety Representative constitutes an unlawful unilateral change in employees' terms and conditions of employment. General Counsel argues that Respondent violated the Act when it unilaterally changed terms and conditions of employment by appointing Johnson as Union Health and Safety Representative. Respondent contends that Union's failure to demand bargaining over the Respondent's selection to fill the position of Union Health and Safety Representative constitutes a waiver and gives Respondent the right to fill the vacant position.

In order for Respondent's action not to be considered a change in a past practice, it must be proven that there was a practice established of Respondent appointing a Union Health and Safety Representative.

Applying the same principles discussed above, I must look both to the language of Respondent's best, last and final offer language as well as past practice. The language of Respondent's implemented Article 26, section 3(a) is clear and unambiguous that only the unions jointly have the right to appoint candidates to be Union Health and Safety Representatives. No plausible interpretation of Article 26, Section 3(a) suggests Respondent can appoint a Union Health and Safety Representative under any circumstances. Moreover,

[23] General Counsel's exhibit 3, page 11, Article 12, Section 2, UNION REPRESENTATIVES; General Counsel's exhibit 48 page 18 Article, Section 4, UNION REPRESENTATIVES.

[24] General Counsel's exhibit 3, page 30, Article 26, section 2(a), SAFETY.

there is no evidence of a past practice of Respondent appointing Union Health and Safety Representatives. The only past practice is that the unions jointly submitted candidates for the position. Thus, by selecting a candidate the unions did not jointly agree upon, Respondent appropriated to itself the unions' joint right of appointment of a Union Health and Safety Representative, and Respondent made a unilateral change in working conditions.

Respondent in its brief contends General Counsel failed to establish a past practice that Respondent modified since Respondent acted only when there was no joint agreement on a candidate. However, there is no dispute that the past practice is only the unions nominated candidates to fill the Union Health and Safety Representative position. Moreover, there were instances when the unions were unable to agree on a joint appointment for Union Health and Safety Representative. In those cases the unions were given time to come to a consensus on a joint candidate. Respondent did not choose a Union Health and Safety Representative in the absence of the unions' joint agreement. Thus, General Counsel has established that the past practice has been at all times that the unions jointly chose the individual to appoint and in the absence of such a joint agreement no candidate was chosen by Respondent.

5. Waiver

It is well established that a union may waive its right to bargain over unilateral changes to employees' terms and conditions of employment. *Justesens's Food Stores*, 160 NLRB 687 (1966); *U.S. Lingerie Corp*., 170 NLRB 750 (1968). However, when the union receives notice of the action contemporary with the action itself, there can be no waiver. *Triple A Fire Protection,* 315 NLRB 409 (1994). Moreover, where a request to bargain would be futile there is no waiver by inaction. *Gannett Rochester Newspapers*, 319 NLRB 215 (1995).

Respondent's contention that the Union waived its right to bargain over Respondent's February 18, 2005, appointment of the Union Health and Safety Representative must fail because the Union was presented with a fait accompli when Respondent announced it was appointing an interim Union Health and Safety Representative and would make the appointment permanent on March 1, 2005 if the Unions did not come up with a joint candidate. In the face of this announcement, a request to bargain would be futile. I find that the Union did not waive its right to bargain about the Respondent's appointment of a Union Heath and Safety Representative and that by unilaterally changing working conditions Respondent violated Section 8(a)(1) and (5) of the Act.

10(b) issue

In its answer to the complaint and at the hearing, Respondent raised Section 10(b) of the Act as an affirmative defense. On February 24, 2005 the Union filed a charge[25] in case 21-CA-36741 alleging that Respondent violated Section 8(a)(1), (3) and (5) of the Act by installing an employee to the vacant position of Union Health and Safety Representative. On February 24, 2005, the Union filed a second charge[26] in case 21-CA-36742 against Respondent alleging Respondent violated Section 8(a)(1), (3) and (5) of the Act by failing to install the employees jointly appointed by the unions on September 14, 2004. On March 16, 2005 the Acting Regional Director for Region 21 dismissed both charges due to the Union's lack of cooperation.[27]

[25] Respondent's exhibit 11.
[26] Respondent's exhibit 12
[27] Respondent's exhibit 13

On March 23, 2005, the Union filed a charge[28] in case 21-CA-36772 alleging that Respondent violated Section 8(a)(1), (3) and (5) of the Act by installing an employee to the vacant position of Union Health and Safety Representative. On April 1, 2005, this charge was amended[29] to add Respondent violated Section 8(a)(1), (3) and (5) of the Act by failing to install the employees jointly appointed by the unions on September 14, 2004.

Section 10(b) of the Act states a charge must be filed and served within six months of the unfair labor practice. In this case the alleged unfair labor practices occurred on or about November 3, 2004 when Respondent advised the unions that they had no right to remove incumbent Union Health and Safety Representatives and on or about February 18, 2005, when Respondent advised the unions that it was appointing Johnson as Union Health and Safety Representative. Both sets of charges were filed within six months of the alleged unfair labor practices. Thus, Respondent's defense under Section 10(b) of the Act must fail.

Respondent also raised the issue of the abuse of the Board's process in the filing of duplicate charges after dismissal of earlier identical charges. In this case it appears that the Regional Director dismissed the first set of charges for failure of Respondent to cooperate. There was no dismissal based upon the merits of the charges themselves. I find no abuse of the Board's process under such circumstances.

Conclusions of Law

National Steel and Shipbuilding Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Shipyard Workers Union, affiliated with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

Respondent has engaged in conduct in violation of Section 8(a)(1) and (5) of the Act by on or about February 18, 2005, appointing a Union Health and Safety Representative.

Respondent has not violated the Act in any other respect and the remaining complaint allegations are dismissed.

The above are unfair labor practices affecting commerce within the meaning of Sections 2(6), (7) and (8) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the purposes of the Act. I shall order the Respondent to bargain with the Union as the exclusive collective-bargaining representative of its employees in the following described unit and on request by the Union meet and bargain in good faith:

> All full-time and regular part-time iron, steel and metal products fabrication employees including layout men, shipbuilders, template makers, pipewelders,

[28] General Counsel's exhibit 1(d)
[29] General Counsel's exhibit 1(g)

code welders, shipfitters, sheetmetal fitters, welding maintenance persons, welders, burner CM operators, riggers, tank testers, machine operators A, crane operators DT, burners, blacksmiths, chippers, acid tank men, machine operators B, galvanizers, material chasers, line heaters, rod shack attendants, helpers, and trainees employed by Respondent at and out of its facility located at Harbor Drive and 28th Street, San Diego, California.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[30]

ORDER

The Respondent, National Steel and Shipbuilding Company, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Shipyard Workers Union, affiliated with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO as the exclusive collective-bargaining representative of its employees in the appropriate unit:

> All full-time and regular part-time iron, steel and metal products fabrication employees including layout men, shipbuilders, template makers, pipewelders, code welders, shipfitters, sheetmetal fitters, welding maintenance persons, welders, burner CM operators, riggers, tank testers, machine operators A, crane operators DT, burners, blacksmiths, chippers, acid tank men, machine operators B, galvanizers, material chasers, line heaters, rod shack attendants, helpers, and trainees employed by Respondent at and out of its facility located at Harbor Drive and 28th Street, San Diego, California.

(b) Unilaterally appointing a Union Health and Safety Representative

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain in good faith with the Union as the collective-bargaining representative of its employees in the described appropriate unit concerning terms and conditions of employment and, if agreements are reached, embody the agreements in a signed collective-bargaining agreement.

(b) On request of the Union, rescind the February 18, 2005 appointment of a Union Health and Safety Representative.

[30] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days after service by the Region, post at its facilities in San Diego, California, copies of the attached notice marked "Appendix." [31] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Company's authorized representative, shall be posted by the Company immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed a facility involved in theses proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Company at any time since February 18, 2005.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 15, 2006

_____
John J. McCarricK
Administrative Law Judge

[31] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted Pursuant to an Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives or bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain collectively with Shipyard Workers Union, affiliated with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO as the exclusive collective-bargaining representative of its employees in the appropriate unit:

All full-time and regular part-time iron, steel and metal products fabrication employees including layout men, shipbuilders, template makers, pipewelders, code welders, shipfitters, sheetmetal fitters, welding maintenance persons, welders, burner CM operators, riggers, tank testers, machine operators A, crane operators DT, burners, blacksmiths, chippers, acid tank men, machine operators B, galvanizers, material chasers, line heaters, rod shack attendants, helpers, and trainees employed by Respondent at and out of its facility located at Harbor Drive and 28th Street, San Diego, California.

WE WILL NOT unilaterally appoint a Union Health and Safety Representative.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with Shipyard Workers Union, affiliated with International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO as the exclusive collective-bargaining representative of its employees in the appropriate unit:

All full-time and regular part-time iron, steel and metal products fabrication employees including layout men, shipbuilders, template makers, pipewelders, code welders, shipfitters, sheetmetal fitters, welding maintenance persons, welders, burner CM operators, riggers, tank testers, machine operators A, crane operators DT, burners, blacksmiths, chippers, acid tank men, machine operators B, galvanizers, material chasers, line heaters, rod shack attendants, helpers, and trainees employed by Respondent at and out of its facility located at Harbor Drive and 28th Street, San Diego, California.

WE WILL upon request of the Union, rescind the February 18, 2005 appointment of a Union Health and Safety Representative.

NATIONAL STEEL AND SHIPBUILDING CO.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor
Los Angeles, California 90017-5449
Hours: 8:30 a.m. to 5 p.m.
213-894-5200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.